

# EXHIBIT C

#5173

ON BEHALF OF THE DEFENDANT, APRIL ELIZABETH ISAACSON

COX COMMUNICATIONS, INC., ET KILPATRICK TOWNSEND AND

2 AL: STOCKTON LLP  
 3 2 EMBARCADERO CENTER, SUITE  
 4 1900  
 5 SAN FRANCISCO, CA 94111

1 UNITED STATES DISTRICT COURT  
 2  
 3 HONORABLE JOHN W. HOLCOMB, DISTRICT JUDGE  
 4 ENTROPIC COMMUNICATIONS, LLC, )  
 5 )  
 6 Plaintiff, )  
 7 Vs. )  
 8 ) No. LACV23-01043-JWH  
 9 DISH NETWORK CORPORATION, ET AL.; ) LACV23-01050-JWH  
 10 COMCAST CORPORATION, ET AL.; ) LACV23-01049-JWH  
 11 COX COMMUNICATIONS, INC., ET AL; ) LACV23-01048-JWH  
 12 )  
 13 Defendants. )  
 14 )  
 15 )  
 16 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
 17 MOTION HEARING AND SCHEDULING CONFERENCE  
 18 SANTA ANA, CALIFORNIA  
 19 WEDNESDAY, AUGUST 9, 2023  
 20  
 21  
 22  
 23 MIRIAM V. BAIRD, CSR 11893, CCRA  
 24 OFFICIAL U.S. DISTRICT COURT REPORTER  
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UNITED STATES DISTRICT COURT

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UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT

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1 SANTA ANA, CALIFORNIA; WEDNESDAY, AUGUST 9, 2023; 10:09 A.M.

2 ---

3 THE CLERK: Calling item number one, Entropic case

4 versus DISH Network, 23-01043.

5 Calling item number two, Entropic Communications

6 versus Cox Communications, Inc., et al. Case number

7 LACV-23-01047.

8 Calling item number three, Entropic Communications,

9 LLC, versus Comcast Corporation, et al. Case number

10 23-01048.

11 Calling item number four, Entropic Communications

12 versus Cox Communications, Inc., et al. Case number

13 23-01049.

14 Calling item number five, case number 23-01050,

15 Entropic Communications, LLC, versus Comcast Corporation,

16 et al.

17 Counsel, if you would please state your appearance

18 for the record, beginning with plaintiff.

19 MR. SHIMOTA: Jim Shimota appearing on behalf of

20 plaintiff Entropic, LLC.

21 MS. GOODRICH: Christina Goodrich from K&amp;L Gates on

22 behalf of plaintiff Entropic, LLC. I'm joined today by my

23 colleagues Ken Bridges and Nick Lenning, Cassidy Young, and

24 Kelsi Robinson, all on behalf of plaintiff.

25 I know Your Honor may be asking who is arguing

UNITED STATES DISTRICT COURT

1 which motions. Mr. Bridges will be arguing the Comcast  
 2 motions. Mr. Shimota will be arguing the 101 motions. I'll  
 3 be handling the scheduling conference.

4 THE COURT: Got it. Okay. Good morning. Good to  
 5 see all of you.

6 Who wants to go next?

7 MR. MARCHESE: Good morning, Your Honor. Chris  
 8 Marchese from Fish & Richardson on behalf of the DISH  
 9 defendants.

10 THE COURT: Mr. Marchese, good morning.

11 MR. SHARTZER: Your Honor, Adam Shartzer of Fish &  
 12 Richardson also on behalf of the DISH defendants. With  
 13 respect to the argument today, Chris will argue the '566  
 14 patent for DISH. Then the '910 patent, I'll be arguing that  
 15 one today for DISH.

16 THE COURT: Got it. Okay. Good morning,  
 17 Mr. Shartzer.

18 MR. SHARTZER: Good morning, Your Honor.

19 MS. ISAACSON: Good morning, Your Honor. April  
 20 Isaacson from Kilpatrick Townsend on behalf of the Cox  
 21 defendants. Along with me is my colleague Chris Leah as well  
 22 as Michael Turton.

23 THE COURT: All right. Good morning, counsel.

24 MR. PADMANABHAN: Good morning, Your Honor.  
 25 Krishnan Padmanabhan, Winston & Strawn, on behalf of the

UNITED STATES DISTRICT COURT

1 Comcast defendants.

2 THE COURT: Mr. Padmanabhan, talk into the  
 3 microphone and say that again.

4 MR. PADMANABHAN: I apologize.

5 THE COURT: That's okay. We just want to make sure  
 6 the record is complete.

7 MR. PADMANABHAN: Good morning, Your Honor.

8 THE COURT: Good morning.

9 Mr. PADMANABHAN: Krishnan Padmanabhan on behalf of  
 10 the Comcast -- now it's on.

11 Good morning, Your Honor. Krishnan Padmanabhan of  
 12 Winston & Strawn on behalf of the Comcast defendants. With  
 13 me I have Diana Leiden and Saranya Raghavan also of Winston &  
 14 Strawn. And we have a corporate representative, Mr. Kevin  
 15 Chung of Comcast.

16 THE COURT: All right. Good morning to all of you.  
 17 Thank you.

18 MR. SHARTZER: Your Honor, one moment, please. I  
 19 neglected to also introduce our corporate representative for  
 20 DISH as well. His name Mr. James Hanft. He's in the back  
 21 there.

22 THE COURT: All right. Welcome, sir. Good to see  
 23 you.

24 All right. I've got about two hours this  
 25 morning -- well, bleeding now into the afternoon, to deal

UNITED STATES DISTRICT COURT

1 with all these matters. Here's what I'd like to do. Let's  
 2 spend about a half an hour on each motion, 15 minutes per  
 3 side arguing it.

4 Then in the time remaining we'll deal with the  
 5 scheduling conferences and set -- my hope is to set schedule  
 6 for the claim construction processes in each of the sets of  
 7 cases, the MoCA cases and the cable cases.

8 All right. Let's start, please, with the 101  
 9 motion in the 1043 case involving DISH. I have provided  
 10 counsel with tentatives on all three of these motions.  
 11 Anybody did not get the tentative or did not have time to  
 12 review it? Okay.

13 I'm looking for -- nobody is saying that he or she  
 14 did not receive it and did not have time to review it, so I'm  
 15 going to assume that you all received them and you've had  
 16 sufficient time to process them.

17 I know there are, well, 17 pages, 17 pages, and 13  
 18 pages. So they're not hideously long, but they're also not  
 19 -- they have some detail in them. I hope they're helpful.

20 I'll say what I always say when I have tentatives,  
 21 and that is that it's truly a tentative. Please push back  
 22 respectfully and tell me where I got it dead wrong. I want  
 23 to hear that. It's my object. It's my goal to get it right.

24 I think it makes sense on probably all of these  
 25 motions to start with the plaintiff. I think the plaintiff

UNITED STATES DISTRICT COURT

1 is on the negative side of each tentative, at least in some  
 2 sense, so let me hear from plaintiff first. And as I said,  
 3 let's go -- let's plan to go about 15 minutes. I think you  
 4 can go pretty fast.

5 MR. SHIMOTA: I can, Your Honor.

6 THE COURT: Okay. In terms of my knowledge and  
 7 understanding of the patents, I think I have a pretty good  
 8 grasp, so you don't need to deal with kind of the big issues.

9 I didn't state that in a very clear way. You don't  
 10 need to start at ground zero, okay? Go ahead, please.

11 Mr. Shimota, you're going to --

12 MR. SHIMOTA: We provided you with our slide  
 13 presentation, Your Honor. I think we're having a little  
 14 trouble with the audiovisual equipment, so if I could hand  
 15 that up to you so I could just have some things you could  
 16 refer to.

17 THE COURT: Sure. I prefer the hard copy anyway.

18 What do I have here so far? I've got a Cox -- let's see.

19 K&L Gates has provided me with a couple of packets. I've got  
 20 Entropic's argument in opposition to Comcast's motion. Do I  
 21 have two copies of the same thing?

22 MS. GOODRICH: Your Honor, those are two separate  
 23 packets. I'll let Mr. Bridges explain when he argues that  
 24 motion.

25 THE COURT: Okay. I have four packets. They're  
 UNITED STATES DISTRICT COURT

1 MR. SHIMOTA: I will, Your Honor. Thank you.

2 THE COURT: Okay. In the interest of time, let's  
3 move to Comcast's motion. I think Entropic probably ought to  
4 go first again, so that's Mr. Bridges, right?

5 MR. BRIDGES: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. BRIDGES: Good morning. It's good to see you  
8 again. I feel like I was here just last month.

9 To start off, I would ask my colleagues from  
10 Comcast if in my argument I stray into anything that you  
11 might think is confidential information, if you will stop me  
12 as quickly as possible. I'll try to be mindful of that.

13 First of all, Your Honor, with respect to the  
14 tentative, there are parts we agree with and parts we don't  
15 agree with, unsurprisingly for what seems to be such a  
16 complicated issue -- or is it a complicated issue?

17 The parties' briefing so far certainly made it seem  
18 that way, but I'm here to tell Your Honor that it's actually  
19 a much, much simpler issue when Your Honor looks at what he's  
20 actually being asked to decide.

21 So this is relevant. First of all, if you go to  
22 your tentative at page 13 and the disposition.

23 THE COURT: Yes.

24 MR. BRIDGES: I just want to be very clear about  
25 what it is that Your Honor is being moved to do and what

UNITED STATES DISTRICT COURT

1 Your Honor is considering doing.

2 So you note here that Comcast's instant motion to  
3 dismiss is granted with leave to amend, but the only motion  
4 before Your Honor where Comcast is asking for you to dismiss  
5 the case, the whole case, is Rule 12(b)(1).

6 THE COURT: So that -- so I'm -- that should say  
7 denied in part and granted in part, because I'm denying -- if  
8 I stick with the tentative, which is what we're here to  
9 discuss --

10 MR. BRIDGES: Correct.

11 THE COURT: If I stick with the tentative, I'm  
12 denying the motion with respect to 12(b)(1).

13 MR. BRIDGES: You're denying the Rule 12(b)(1)  
14 motion.

15 THE COURT: Yeah, and granting 12(b)(6) but with  
16 leave to amend.

17 MR. BRIDGES: Yes. And then we have to talk about  
18 Rule 12(b)(6), what Your Honor is actually being asked to do  
19 under rule Rule 12(b)(6). And I made this mistake,  
20 Your Honor. I thought that at one point Comcast was asking  
21 for the case, for the patent infringement claims to be  
22 dismissed under Rule 12(b)(6), but that's not in fact what  
23 Comcast is asking for.

24 Your Honor can take a look at --

25 THE COURT: I understood Comcast's -- maybe I

UNITED STATES DISTRICT COURT

1 should have started with Comcast. I understood Comcast's  
2 fallback position to be if you disagree with Comcast, that  
3 Entropic does not have standing. Then --

4 MR. BRIDGES: Well, we could clarify, Your Honor,  
5 in their briefing if you'd like. There's actually a fairly  
6 clear statement of this in the opening brief at page 2.

7 THE COURT: Hold on one second. I want to eyeball  
8 it myself. Okay.

9 MR. BRIDGES: And I would use the elmo, but I'm  
10 afraid, Your Honor, of switching between the different  
11 channels.

12 THE COURT: It wouldn't be helpful.

13 Okay. I have the briefing. Where should I look?

14 MR. BRIDGES: If you go to page 2, which is the  
15 unique --

16 THE COURT: Page 2 of what?

17 MR. BRIDGES: Page 2 of the opening brief. The  
18 unique page ID at the top is 3078. The page is titled Notice  
19 of Motion and Motion to Dismiss.

20 THE COURT: Okay. I'm at the Notice of Motion and  
21 Motion.

22 MR. BRIDGES: Okay. If you go down to line 22,  
23 Your Honor.

24 THE COURT: Go.

25 MR. BRIDGES: Here we have the sentence:  
UNITED STATES DISTRICT COURT

1 Accordingly, even if the Court finds some basis for subject  
2 matter jurisdiction, Comcast moves to dismiss Entropic's  
3 willfulness claims pursuant to Rule 12(b)(6).

4 THE COURT: Okay.

5 MR. BRIDGES: And if you go on -- it's repeated at  
6 the end, Your Honor, at page 37 of the brief, the unique page  
7 ID 3113, the last sentence of the conclusion starting on  
8 line 13.

9 THE COURT: Okay.

10 MR. BRIDGES: The same thing.

11 So the point here, Your Honor, is just that there  
12 is two different motions with two different forms of relief  
13 that are being asked for. Only one is to dismiss the case on  
14 12(b)(1) grounds.

15 THE COURT: Okay. So in the interest of time, if I  
16 stick with the tentative, what should I be saying in the  
17 disposition?

18 MR. BRIDGES: I think what Your Honor had said  
19 earlier is proper. I think Your Honor should probably say  
20 that you're denying the Rule 12(b)(1) motion and that you're  
21 retaining subject matter jurisdiction, which, of course,  
22 Your Honor would have to do in order to do what is  
23 contemplated in item two, which is eventually dismiss with  
24 prejudice because, of course, you can't do that if you don't  
25 have subject matter jurisdiction.

UNITED STATES DISTRICT COURT

1 So for consistency purposes, I would just urge  
 2 that --  
 3 THE COURT: I understand.  
 4 MR. BRIDGES: -- you work on the disposition.  
 5 But this actually implicates the bigger issue,  
 6 Your Honor, of what exactly are you being asked to do.  
 7 You're only being asked to dismiss this case for lack of  
 8 subject matter jurisdiction. The parties, in the interest of  
 9 time --

10 THE COURT: In the tentative I'm not doing that.

11 MR. BRIDGES: In the tentative you're not, but what  
 12 I want to be clear about in the tentative is how Your Honor  
 13 gets there.

14 So what happens is that in the tentative Your Honor  
 15 pursues the path the parties have laid out for you in  
 16 briefing. The path that the parties laid out for you in  
 17 briefing is to do this by trying to interpret the VSA and try  
 18 to look at all of these complicated provisions.

19 But what happened, Your Honor -- if you have our  
 20 slide deck --

21 THE COURT: Yes.

22 MR. BRIDGES: -- I think it would be instructive to  
 23 turn to slide 13.

24 THE COURT: Hold on one second.

25 MR. BRIDGES: So apologies, Your Honor. Because of  
 UNITED STATES DISTRICT COURT

1 the fact we weren't sure about tentative, you will have two  
 2 slide decks for this motion because there were an awful lot  
 3 of slides. They are -- the numbers --

4 THE COURT: Hold on.

5 MR. BRIDGES: -- page numbers are consecutive.

6 THE COURT: Hold on. I'm not sure I have your  
 7 slide deck here. Entropic's --

8 MR. BRIDGES: It is titled, Your Honor, Entropic's  
 9 argument in opposition to Comcast's motion to dismiss. It  
 10 looks like this, Your Honor (indicating).

11 THE COURT: Okay. I have it.

12 MR. BRIDGES: So if you will go forward to slide  
 13 13, I just wanted to highlight something Comcast pointed  
 14 out --

15 THE COURT: I'm there.

16 MR. BRIDGES: -- in reply. So Comcast says, well,  
 17 you're only relying on declaratory judgment cases. They're  
 18 inapplicable. They're declaratory judgment. And this got us  
 19 to asking the question, well, wait a minute. What cases is  
 20 Comcast citing in its briefing for the proposition that a  
 21 covenant can possibly deprive the Court of subject matter  
 22 jurisdiction?

23 And the answer is all of those are DJ cases. The  
 24 reason, Your Honor, is because it turns out that in a case  
 25 where the patent owner maintains a case for infringement, the

UNITED STATES DISTRICT COURT

1 subject matter jurisdiction question is done. There's  
 2 nothing more to do.

3 There is a case or controversy because there is a  
 4 case or controversy. The Federal Circuit has actually  
 5 decided this issue in a line of cases which we discovered in  
 6 preparing for oral argument, and we sent these over to  
 7 Comcast last night when we recognized the importance of this.

8 I mean, obviously the Court wants to get it right  
 9 exactly, in particular for subject matter jurisdiction. So  
 10 if Your Honor will take a look at slide 14, this is the  
 11 implication.

12 The analysis of case or controversy which the  
 13 parties have spent a lot of time fighting about actually  
 14 doesn't in this case need to turn on the VSA at all because  
 15 it is so simplified, it's automatic.

16 As a matter of law where there is a properly pled  
 17 complaint for patent infringement, meaning we asked for  
 18 relief under the Patent Act, whatever covenants or licenses  
 19 may exist, Your Honor, those are defenses.

20 Your Honor has jurisdiction over claims, not  
 21 issues. The claim that Your Honor has jurisdiction over is a  
 22 patent infringement claim. That's federal question. No one  
 23 doubts it. Your Honor's jurisdiction. End of story. And  
 24 that is what Air Products says.

25 THE COURT: Let's take a hypothetical where  
 UNITED STATES DISTRICT COURT

1 plaintiff purported patentee sues alleged infringer, like a  
 2 one patent that has one claim in it, to make it simple. When  
 3 one assigns a patent, one has to assign the right to not  
 4 merely the patent but the right to sue for infringement.

5 So let's say that the plaintiff was assigned the  
 6 patent but didn't have an express assignment of the right to  
 7 sue for infringement. The defense that the defendant usually  
 8 raises in those circumstances is a 12(b)(1) type standing  
 9 defense.

10 MR. BRIDGES: Uh-huh, but that's not what's being  
 11 raised here, Your Honor. That's not what King  
 12 Pharmaceuticals and those cases are about. The question  
 13 isn't standing. The question is whether there's a case or  
 14 controversy that the Court can hear.

15 All of those cases like King Pharmaceuticals, the  
 16 question there is the patent owner doesn't want a case. The  
 17 patent owner either never brought a patent infringement case  
 18 or brought one and then changed its mind.

19 Then in those cases what's happening is that the  
 20 patent owner is saying we don't want any invalidity or  
 21 non-infringement counterclaims to have to face. So here's  
 22 what we'll do. We'll provide you a covenant or a license and  
 23 represent to the Court that we are never going to sue you for  
 24 patent infringement.

25 That has the effect of removing reasonable  
 UNITED STATES DISTRICT COURT

1 apprehension of suit, so therefore the Court has no  
 2 jurisdiction. The reason, Your Honor, is jurisdiction over  
 3 what? In those cases the jurisdiction question is over the  
 4 counterclaims, the DJ-styled counterclaims -- or affirmative  
 5 DJ claims, as the case may be.

6 Those claims rest on the Declaratory Judgment Act  
 7 for jurisdiction. It must meet those requirements, or  
 8 otherwise there is no case or controversy to be had.

9 THE COURT: So what's the therefore, what?

10 Therefore, what in this case?

11 MR. BRIDGES: Exactly. So in this case the point  
 12 of this, Your Honor, is simply that instead of issuing a  
 13 final ruling that attempts to go through the VSA and  
 14 determine what it means, Your Honor can simply follow the  
 15 binding authority of Air Products, which is on slide 15, and  
 16 deny the motion out of hand.

17 In fact, if Your Honor will take a look at  
 18 slide 15, can you see that -- which is also in our binder at  
 19 tab one, the Air Products case -- this is a case where we  
 20 have an unquestioned really, unquestioned license in terms of  
 21 scope, and the question was just termination.

22 So was the termination of the license effective?  
 23 And in Air Products the Federal Circuit had quite a lot of  
 24 analysis here and looked at some old Supreme Court cases and  
 25 said what you can see on the slide, Your Honor, that the

UNITED STATES DISTRICT COURT

1 resolution of state law questions that may even render a  
 2 federal question moot, even if that happens, it does not  
 3 deprive Your Honor of subject matter jurisdiction where we  
 4 have made out a properly pled claim of patent infringement.

5 THE COURT: So does that mean we would kick the  
 6 issue of whether the covenant not to sue runs with the patent  
 7 to Entropic, do we kick that issue down the road? I mean, it  
 8 doesn't go away for all time.

9 MR. BRIDGES: It absolutely does not, and that's  
 10 precisely the point, Your Honor, that Your Honor shouldn't at  
 11 the Rule 12 stage be in the business of deciding the contract  
 12 issue for all time.

13 That's the thing that's a little bit concerning is  
 14 that if Your Honor had to do that, you would have to do that.  
 15 But if as a matter of judicial restraint you don't have to do  
 16 that, then you shouldn't do that.

17 The denial in this case can be as simple,  
 18 Your Honor, as the Pixton case, which is in tab four, where  
 19 the Federal Circuit in one paragraph decided jurisdiction  
 20 applies.

21 So if Your Honor goes to the very end of the Pixton  
 22 case -- it's very short -- the Federal Circuit in one  
 23 paragraph simply says that these facts are like Air Products.  
 24 There's a question about the applicability of a license or  
 25 covenant defense, and as such we have jurisdiction.

UNITED STATES DISTRICT COURT

1 THE COURT: Okay. Couple things. So it's kind of  
 2 kicking the can down the road, and then I adjudicate this  
 3 issue on a summary judgment motion?

4 MR. BRIDGES: Yes. I would expect that to be true,  
 5 Your Honor. The reason I want to urge that upon the Court is  
 6 the other part of my argument, the part of my argument which  
 7 is that in fact there are an awful lot of issues here which I  
 8 believe does require some detailed analysis of the VSA and  
 9 what it means.

10 And there is where we would depart with Your  
 11 Honor's tentative. We don't necessarily agree with all of  
 12 the conclusions that Your Honor draws, right, about various  
 13 aspects of the VSA.

14 For instance, we don't -- let me give you an  
 15 example. Your Honor in the tentative concludes that the VSA  
 16 is on a patent by patent or, since trademarks, copyrights,  
 17 and trade secrets are also involved, I suppose on a  
 18 trademark-by-trademark basis, a copyright-by-copyright basis,  
 19 et cetera.

20 But there's a perfectly plausible explanation. I  
 21 mean, if I allow someone into my home and say, you know, you  
 22 can come in and use my things but don't steal anything, and  
 23 they steal one item, it's quite plausible that I might revoke  
 24 the authorization for everything because they're acting  
 25 inconsistently with the bargain. And that's our position on

UNITED STATES DISTRICT COURT

1 the VSA.

2 Our position on the VSA is that if Comcast is  
 3 willfully infringing even on one patent, that's acting  
 4 inconsistently with the business relationship the VSA  
 5 establishes. Remember, Your Honor, the VSA is not a license.  
 6 It's not about this particular section. The VSA is a vendor  
 7 support agreement. It's about a bigger business relationship  
 8 between the parties.

9 So I'm sure that Comcast will dispute hotly the  
 10 particular meanings. They do, and Your Honor has seen this  
 11 in the briefing. Our point is there's an awful lot of  
 12 material here where the Court would benefit tremendously from  
 13 having information from discovery to make this decision  
 14 ultimately. For example --

15 THE COURT: But these are kind of new issues that  
 16 you didn't raise in the briefing.

17 MR. BRIDGES: No. We've raised all these issues in  
 18 terms of interpretation and in terms of what the VSA should  
 19 mean.

20 THE COURT: But not these cases and not your --

21 MR. BRIDGES: No, not -- yes, Your Honor. We did  
 22 not -- in this sense we did not do Your Honor a service  
 23 because what happened, I think honestly, we took the Comcast  
 24 cases on subject matter jurisdiction, and we were eager to  
 25 answer all of the challenges that they made to what this

UNITED STATES DISTRICT COURT

1 covenant means and the representations, et cetera. And we  
 2 were concerned that Your Honor might actually on a 12(b)(1)  
 3 motion think that you had to decide these issues and do it.

4 Once they identified for us the fact that, wait,  
 5 these are all DJ cases, then it became apparent that we  
 6 should make sure that we're not giving the Court the wrong  
 7 authority. At that point we realized, oh, the 12(b)(1)  
 8 motion is easy. It can be just dismissed almost immediately.

9 Then at that stage the only thing that's left for  
 10 Your Honor to decide is the 12(b)(6) motion, and the 12(b)(6)  
 11 motion is only limited to the particular willfulness  
 12 allegations.

13 THE COURT: So let's go to that. If I stick with  
 14 the tentative at least in that aspect, that willfulness has  
 15 not been pleaded sufficiently --

16 MR. BRIDGES: Yes.

17 THE COURT: -- Entropic can fix that?

18 MR. BRIDGES: Yes. Entropic can fix that. And  
 19 that's not a problem, Your Honor. We don't have a problem  
 20 with that part, saying, hey, you know, you can amend. What I  
 21 would say, I would just point out one thing, because I don't  
 22 want to mislead Your Honor about how this may play out.

23 This case is unique in procedural posture from most  
 24 cases that have willful infringement as a part of the case.

25 THE COURT: Because?

UNITED STATES DISTRICT COURT

1 MR. BRIDGES: Because willful infringement here is  
 2 an integrated part of Comcast's license or covenant defense.  
 3 So what we have, Your Honor, is we have an affirmative patent  
 4 infringement claim.

5 Assume for a moment that Entropic hadn't pled  
 6 willful infringement at all, didn't plead it. What would  
 7 happen? Comcast has a defense to that claim of patent  
 8 infringement. We have a contract. There is, then, of  
 9 course, a defense to the defense. That would implicate the  
 10 willful infringement issue. Right?

11 That's going to come in no matter what. It comes  
 12 in because it is part and parcel of the contract defense.

13 THE COURT: You're saying it doesn't need to be  
 14 pleaded.

15 MR. BRIDGES: I'm saying that it doesn't need to be  
 16 pleaded. In fact, it doesn't as a technical matter -- not  
 17 that we wouldn't. We're happy to because we're happy to  
 18 engage with that issue. I'm saying that as a technical  
 19 matter, it doesn't need to be pleaded for purposes of the  
 20 motions that are in front of Your Honor.

21 If there's a future motion down the road where  
 22 Your Honor has decided, for example, perhaps at the summary  
 23 judgment stage that without a showing of willful  
 24 infringement, there is no claim here, if that happened, I  
 25 would even at that stage say that we do not have to plead a

UNITED STATES DISTRICT COURT

1 defense to a defense. We have to plead an affirmative claim.  
 2 We will have. We will have pled the willful infringement  
 3 issue, Your Honor.

4 I'm just warning you ahead of time that I don't  
 5 want to mislead Your Honor so that in a future dispute you  
 6 say, well, but at the first hearing you agree that you would  
 7 amend these things and you would put in willfulness  
 8 allegations and that everything turns on that. I just want  
 9 to observe the unique posture here because with willfulness  
 10 is pulled in as part of the defense.

11 THE COURT: Okay. I appreciate that. I think I  
 12 understand your point, and I need to think through the  
 13 implications here.

14 And another point that you made that I don't want  
 15 to miss is I think you made the point that if you, even under  
 16 my tentative, if you successfully plead willful infringement  
 17 with respect to any patent or any claim of any patent, you  
 18 can proceed with your infringement case with respect to all  
 19 patents in suit.

20 MR. BRIDGES: Yes. And the reason for that,  
 21 Your Honor, is that actually both parties seem to agree --  
 22 they may turn out to say they don't agree, but certainly from  
 23 their opening brief both parties had agreed that that is  
 24 exactly what would happen.

25 The reason that they argued that is they wanted  
 UNITED STATES DISTRICT COURT

1 Your Honor to find certain things about the timing of when  
 2 you would measure willful infringement. They wanted it to  
 3 only apply to before the VSA was signed, and Your Honor's  
 4 tentative does not find that. That's why they -- I believe  
 5 that's why they took the position that what happens is  
 6 willful infringement negates the covenant. It's gone --  
 7 which means it was never there. It didn't forbid anything.

8 So all of the patent infringement claims which are  
 9 being held in abeyance in this covenant like a giant dam  
 10 holding back the wall, willful infringement breaks the dam.  
 11 At that point, in our view, because willfulness acts  
 12 inconsistently with the business relationship MaxLinear and  
 13 Comcast expected to establish, all bets are off with respect  
 14 then to claims of infringement. The covenant is negated.

15 As a result of that, right, it would unwind all of  
 16 that material, which -- and I believe that I'm giving  
 17 Your Honor a lot to think about, so I don't want to hit too  
 18 many issues in a row, but I would say that's another point  
 19 where we feel like your tentative does not engage fully with  
 20 our arguments of contract interpretation because, for  
 21 example, that also has a serious effect with respect to  
 22 whether or not this could authorize acts of infringement.

23 It seemed in places that Your Honor might be  
 24 suggesting, yeah, this looks like it authorizes Comcast to  
 25 infringe, but that can't be, Your Honor, because you cannot

UNITED STATES DISTRICT COURT

1 de-authorize an act that you've authorized. We made these  
 2 points in the brief and you -- you cannot do that.

3 So what you're not allowed to do is give someone a  
 4 license for a past act and then later say I'm going to take  
 5 that back and reconvert that authorized act into an  
 6 infringing act.

7 You cannot, in other words, perform a Lazarus-type  
 8 of miracle, Your Honor, on claims that you've surrendered.  
 9 The Courts don't allow that. That's a no-no because we don't  
 10 want the chaos that could ensue.

11 Now, you may be able to terminate a license, change  
 12 things going forward. But going backward you can't. So what  
 13 that means is if you can retroactively take it back, which is  
 14 absolutely what the covenant is meant to do and what the  
 15 parties seem to agree on, it can't be an authorization in the  
 16 first place.

17 THE COURT: So worst case scenario for Entropic, if  
 18 SDNY says -- now I've forgotten your licensor.

19 MR. BRIDGES: Oh, the party that originally owned  
 20 the patents, Your Honor?

21 THE COURT: Yes.

22 MR. BRIDGES: MaxLinear.

23 THE COURT: MaxLinear -- not licensor but your  
 24 assignor, I guess. SDNY says: MaxLinear, you win. The  
 25 patents revert to you. I guess that would be the remedy,

UNITED STATES DISTRICT COURT

1 right? What's the remedy -- if MaxLinear wins in the  
 2 Southern District of New York, what happens?

3 MR. BRIDGES: Oh. Well, what's at issue in the  
 4 Southern District of New York actually, Your Honor, is  
 5 different than what's at issue here, because there what's at  
 6 issue is Comcast is saying that you have breached this  
 7 statement of work that's attached to the VSA. So you've  
 8 breached the VSA because you're not providing us services.

9 THE COURT: Okay. Just stick with my question.  
 10 MaxLinear wins in SDNY. What's the remedy?

11 MR. BRIDGES: If MaxLinear wins, then in  
 12 MaxLinear's view I believe there is no remedy because they  
 13 simply are seeking to have nothing happen, that they can end  
 14 their work under the VSA and that's it. According to, as far  
 15 as I understand -- I'm sure this is in contention -- they  
 16 believe that that work has ended, and so nothing happens.

17 MaxLinear is not asking, nor is Comcast, for the  
 18 New York Court to do anything to affect whether or not  
 19 Entropic can do something. It can't. Entropic is not a  
 20 party to that case. This is a covenant. It's not what's  
 21 being asked for.

22 So that is why Your Honor is faced with that issue  
 23 here.

24 THE COURT: Okay. I need to move on.  
 25 MR. BRIDGES: Absolutely. I understand,

UNITED STATES DISTRICT COURT

1 Your Honor.

2 THE COURT: Let me hear, please, from Comcast,  
 3 Mr. Padmanabhan.

4 MR. PADMANABHAN: Perfect, Your Honor. I think, as  
 5 Mr. Bridges admitted, we received new cases yesterday evening  
 6 at 4:30. We promptly read those cases.

7 THE COURT: And what do you want to do about them?

8 MR. PADMANABHAN: They have nothing to do with this  
 9 case, Your Honor. Okay? That's what I'm going to start  
 10 with.

11 THE COURT: Okay.

12 MR. PADMANABHAN: What those cases say -- I'm going  
 13 to start with Air Products. You can look at Pixton. What  
 14 they say is that if there are state law questions that  
 15 doesn't rob a Federal Court of subject matter jurisdiction if  
 16 there are also patent issues. That's what those cases stand  
 17 for.

18 This is a completely different issue. Remember, we  
 19 need to start with the framework that this is a covenant not  
 20 to sue. They can't pass go, okay, because there's -- there's  
 21 a restriction at the outset. They cannot sue Comcast.

22 One of the things that they said, that Mr. Bridges  
 23 said, is that, well, we're not required to plead willfulness  
 24 or show willfulness. That would make the entire covenant  
 25 empty.

UNITED STATES DISTRICT COURT

1 The only exemption in that covenant not to sue is  
 2 if a -- with respect to a particular patent if that  
 3 particular patent is willfully infringed, then they can sue  
 4 on that. But this idea that they could just say, well, you  
 5 infringed patents, that would make the entire covenant empty.  
 6 That's contrary to New York law which says you can't have a  
 7 contract provision be illusory.

8 So they haven't addressed that. Actually they  
 9 don't address that at all in their opposition brief, the fact  
 10 that their reading of the VSA would render the entire  
 11 covenant illusory.

12 So I'm not sure what their intention is or what  
 13 their thinking is in saying the Court would retain subject  
 14 matter jurisdiction even if they can't plausibly plead  
 15 willfulness.

16 I think what Your Honor certainly found, correctly,  
 17 is that given two chances, an original complaint and a first  
 18 amended complaint, and 60 some odd allegations on  
 19 willfulness, they were not able to plausibly allege  
 20 willfulness.

21 So the question, what more is there to do, for them  
 22 to do? They've had two bites. They've had these patents for  
 23 years.

24 THE COURT: You're urging me to, if I stick with  
 25 the tentative, not grant leave to amend because they've

UNITED STATES DISTRICT COURT

1 already amended?

2 MR. PADMANABHAN: Well, Your Honor, they have  
3 already amended. And I don't think --

4 THE COURT: Is that what you're doing?

5 MR. BRIDGES: Your Honor, I would respectfully  
6 request that, yeah.

7 THE COURT: Okay. I understand that point.

8 MR. PADMANABHAN: Yeah. So maybe we can take a  
9 step back, because Mr. Brings spoke a lot about the  
10 relationship between Comcast and MaxLinear and tried to  
11 characterize this as some sort of, you know, noncentral part  
12 of this agreement.

13 So let's just take a second and talk about who

14 MaxLinear is and who Comcast is, because I think this is

15 worthwhile. This is slide 2, Your Honor. So MaxLinear is --

16 THE COURT: Hold on one second.

17 MR. PADMANABHAN: Yes. Absolutely.

18 THE COURT: Do I have that up here someplace? I  
19 have about 400 different documents up here.

20 Okay. Sorry. I have it in front of me. What  
21 page?

22 MR. PADMANABHAN: Slide 2, Your Honor.

23 THE COURT: I'm there.

24 MR. PADMANABHAN: Okay. So MaxLinear is one of two  
25 major providers of semiconductors in the cable industry.

UNITED STATES DISTRICT COURT

1 Okay. The other one is Broadcom. And just by way of  
2 reference, Your Honor, what's at issue in this lawsuit is  
3 they're suing all of these companies over their use of  
4 Broadcom chips. Okay. Let's just not have any  
5 misconceptions about that.

6 So MaxLinear's semiconductors power devices like  
7 these cable gateways and cable modems that go into millions  
8 of devices that Comcast deploys in their network and that  
9 Comcast relies upon to provide internet service, to provide  
10 television service. Okay.

11 And it's only natural -- go to the next slide --  
12 that they would come to an agreement where Comcast has  
13 assurances that their vendor is going to stand by them, that  
14 the vendor is going to stand by their product and do what's  
15 necessary to make sure that those products will deliver those  
16 high-quality services.

17 Conversely, MaxLinear knows that their industry,  
18 their reputation in the industry is going to be upheld, that  
19 they're going to stand by their customer. That's the nature  
20 of the vendor support agreement.

21 Part of that relationship is this covenant not to  
22 sue, right? It's natural a customer wouldn't expect their  
23 vendor to sue them, right?

24 If you look at the VSA -- let's go to the next  
25 slide -- what it says pretty clearly, Your Honor, is that

UNITED STATES DISTRICT COURT

1 during the term MaxLinear will not sue Comcast with respect  
2 to patent infringement and keeps -- it has this exemption for  
3 willfulness.

4 We talked about the timing, and Mr. Bridges said,  
5 well, we think that, you know, if you -- he used an analogy.  
6 It doesn't have any root in any case law, but he used the  
7 analogy: Well, if I let someone come into my house and they  
8 steal one thing, well, then, I wouldn't let them come in at  
9 all.

10 As Your Honor recognizes in the tentative, willful  
11 infringement requires at least two things: knowledge of the  
12 patent and knowledge that you're infringing. It's a  
13 patent-by-patent analysis. Okay. That -- it only makes  
14 sense that this willfulness exemption would apply on a  
15 patent-by-patent basis.

16 There is an additional piece of this, okay, which  
17 is that -- if we can go to the slide with -- yes, exactly.  
18 Go up a little bit to the second part of the covenant.

19 There's an additional piece of this. And,  
20 Your Honor, I think in your deck this is going to be -- I  
21 apologize. We rearranged these in anticipation. So it's  
22 going to be slide 31 of your deck, Your Honor.

23 THE COURT: Okay. I'm there.

24 MR. PADMANABHAN: Yeah. So the second part of the  
25 covenant not to sue does allow MaxLinear to pursue other

UNITED STATES DISTRICT COURT

1 vendors. So they have relief. What they don't have and why  
2 this is a subject matter question, they don't have relief  
3 against Comcast. They can't sue Comcast. They could go sue  
4 Broadcom. They've chosen not to do that, and there's nothing  
5 they can do to get around that.

6 So if Entropic were to go back and try to formulate  
7 a complaint just alleging infringement without willfulness,  
8 that would make the covenant not to sue empty. That's  
9 contrary to New York law. They've tried to plead  
10 willfulness. They've been unable to do that in two attempts.  
11 Okay.

12 So it's not clear what they would replead at this  
13 point. They've had the patents for years. And by the way,  
14 they have access to MaxLinear's information because  
15 MaxLinear, as Your Honor has heard at length in previous  
16 lawsuits -- I'm sorry, previous hearings with respect to the  
17 Rule 71 issue, MaxLinear is a financial beneficiary in these  
18 cases.

19 MaxLinear is working with Entropic. Entropic has  
20 access to MaxLinear's information. If there was an  
21 allegation of infringement against Comcast, MaxLinear would  
22 know; Entropic would know. They could have pled it in any of  
23 those two instances, the original complaint and the first  
24 amended complaint. They haven't done it.

25 At this point they haven't been able to show the

UNITED STATES DISTRICT COURT

1 exemption is invoked. There's no basis to allege  
 2 infringement. They don't have subject matter jurisdiction to  
 3 allege infringement without a willfulness allegation. We're  
 4 not sure that there's much left to decide, Your Honor.

5 THE COURT: I'm -- even if I stick with the  
 6 tentative, I'm not likely to say no leave to amend. I think  
 7 the law on Rule 15 is pretty clear that Courts should bend  
 8 over backwards when problems with pleadings are pointed out,  
 9 bend over backwards to allow a party to replead and try to  
 10 fix the problem.

11 So I hear you, but that is -- but you may not want  
 12 to push that point much more.

13 MR. PADMANABHAN: Fully understand, Your Honor.

14 With respect to the tentative, obviously the result  
 15 that there is no plausible allegation of willfulness, that  
 16 makes a lot of sense. The fact that, as Your Honor --  
 17 Your Honor, I think, essentially changed the conclusion in  
 18 that allowing them to amend denied without prejudice  
 19 Comcast's 12(b)(1) motion.

20 THE COURT: I can tell you that the disposition is  
 21 the last thing that I did. And even if I stick with the  
 22 concepts in the tentative, I'm going to redo that.

23 MR. PADMANABHAN: Understood, Your Honor.

24 THE COURT: And by the way, I know the caption is  
 25 wrong, too, because it's -- the 1050 case is also against

UNITED STATES DISTRICT COURT

1 Comcast entities.

2 In any event --

3 MR. PADMANABHAN: Understood, Your Honor. I guess  
 4 my point is that -- we understand that. It makes sense to  
 5 us.

6 With respect to the rest of the tentative, I think  
 7 there is this idea that the timing could be at any time does  
 8 not make sense.

9 So, for example, could MaxLinear, after entering  
 10 the VSA, send Comcast a letter saying we think you infringed  
 11 these patents; the covenant is no longer applicable. That  
 12 would render it illusory. That's contrary to New York law,  
 13 which we've cited in our briefing.

14 We've got it up here, Your Honor. And my eyes are  
 15 going to fail me. I can't read off the prompter, but we  
 16 cited a number of cases that would say that you couldn't --

17 THE COURT: What page are you on?

18 MR. PADMANABHAN: Let me find it, Your Honor. Give  
 19 me one moment. So it's page 18, Your Honor, of the slide  
 20 deck. So this idea -- yes, that one. Correct.

21 So this idea that Entropic could send us a letter  
 22 or MaxLinear could send Comcast a letter and say, well,  
 23 you're infringing this patent; the covenant no longer  
 24 applies, would hold the covenant as being empty, being an  
 25 illusory promise.

UNITED STATES DISTRICT COURT

1 That would mean that they never intended to honor  
 2 the covenant in the first place. That's contrary to New York  
 3 law. There's no response citing New York law from Entropic  
 4 on this point.

5 Secondly, a number of their allegations -- and I  
 6 think Your Honor recognizes this in the tentative -- rely on  
 7 information that was in their possession at the time they  
 8 entered the VSA. For example, Comcast's involvement in the  
 9 MoCA alliance or investment in the legacy Entropic entity in  
 10 2003 and 2006, those are things that they knew when they  
 11 entered the VSA.

12 If they expected those things to invoke the  
 13 exemption, that means that they never intended to honor the  
 14 covenant to begin with. That's contrary to New York law.

15 The one thing that's really missing, Your Honor,  
 16 from Entropic's opposition -- and maybe that's why  
 17 Mr. Bridges wants to sidestep it altogether and, just trying  
 18 to, you know, give us a lesson on civil procedure as opposed  
 19 to dealing with the VSA, wants to kick the can on that is  
 20 because they haven't cited New York law.

21 They haven't addressed the law which would hold  
 22 that the covenant must have force; it must have been entered  
 23 with intention. And the only way that they can make it apply  
 24 -- I'm sorry, that they can get past it is if they can show  
 25 that the exemption is applicable with respect to a particular

UNITED STATES DISTRICT COURT

1 patent.

2 They haven't done that.

3 THE COURT: It's got to be done on a  
 4 patent-by-patent basis.

5 MR. PADMANABHAN: Absolutely, Your Honor.  
 6 Otherwise it would make no sense. They could submarine an  
 7 entity. There could be some subsidiary of MaxLinear that  
 8 we've never heard of that sends us some letter, sends Comcast  
 9 some letter, and they could, you know, allege infringement on  
 10 that. And we wouldn't know that this would be even impacting  
 11 the VSA.

12 What they're saying is that essentially they could  
 13 hide the information. They could hide the fact that there's  
 14 an allegation of infringement that impacts the force of this  
 15 covenant. That can't be right.

16 It's -- the two parties have got to be on all  
 17 fours. They've got to say, well, look, you're infringing  
 18 this patent, so the VSA is not applicable. As Your Honor's  
 19 tentative recognizes, that information should be in  
 20 MaxLinear's possession. It should be pretty straightforward.  
 21 And as such, it should be in Entropic's possession.

22 THE COURT: Let me move to a slightly different  
 23 question. The New York case, does the outcome of the  
 24 New York case affect this case in any way?

25 MR. PADMANABHAN: So, Your Honor, I don't want to

UNITED STATES DISTRICT COURT

1 speak for a district court judge in New York, just as I  
 2 wouldn't presume to speak for any judge. What I'll say is  
 3 that it appears that the parties in New York are discussing  
 4 the issue of whether the vendor support agreement continues  
 5 to be enforced, whether or not Entropic -- sorry. MaxLinear  
 6 provided a termination letter that we received on May 23rd --  
 7 whether that termination is actually effective.

8 Now, this Court obviously does not need to decide  
 9 those issues because there's no subject matter jurisdiction  
 10 at the outset, and they would need subject matter  
 11 jurisdiction at the outset in order for this case to  
 12 continue.

13 That being said, for context the only case that  
 14 Entropic cites regarding the issue of termination would say  
 15 that the termination could not be effective for two years and  
 16 three months.

17 So in New York -- and that is because if you send a  
 18 termination preemptively or early, under New York law what  
 19 occurs is that the termination will be effective as of the  
 20 earliest date allowed under the contract. And under the  
 21 contract there's a requirement essentially that there be a  
 22 year notice before the statement of work is canceled or  
 23 terminated and then a further one year and three months of  
 24 notice from the termination of the last statement of work  
 25 before the VSA can be terminated.

#### UNITED STATES DISTRICT COURT

1 So that totals two years and three months.

2 THE COURT: So let's say MaxLinear prevails in  
 3 New York and gets a judgment in its favor. Are you saying  
 4 there's no effect on this case because that judgment would  
 5 essentially provide that the VSA is not terminated until two  
 6 years and three months from the date of the initiation of the  
 7 SDNY lawsuit?

8 MR. PADMANABHAN: So let me break it down,  
 9 Your Honor. I apologize. We've been trying to go very  
 10 quickly. So --

11 THE COURT: My question is pretty simple.

12 MR. PADMANABHAN: Right.

13 THE COURT: Say MaxLinear wins in New York.

14 MR. PADMANABHAN: Right.

15 THE COURT: What does that do to this case, if  
 16 anything?

17 MR. PADMANABHAN: I'm getting there, Your Honor.  
 18 My apologies.

19 So it appears that MaxLinear's view of what  
 20 constitutes winning in New York would be termination sometime  
 21 before that two years and three months.

22 When that is, is subject to the Court in the  
 23 Southern District of New York. What we would submit, what  
 24 Comcast would submit is that in the meantime there's no basis  
 25 for Entropic to hold Comcast hostage in this litigation where

#### UNITED STATES DISTRICT COURT

1 what Comcast has as of today is a covenant not to sue that's  
 2 in force, that's in effect. That keeps them from passing go.  
 3 It keeps them from starting the case because we can't be  
 4 sued.

5 THE COURT: I understand you're saying that, but  
 6 put that aside for a moment. Again, MaxLinear wins in  
 7 New York on MaxLinear's theories, which I guess necessarily  
 8 does not include your two-year, three-month issue. MaxLinear  
 9 wins --

10 MR. PADMANABHAN: Right.

11 THE COURT: -- on all its theories.

12 MR. PADMANABHAN: Right. Your Honor, at that point  
 13 we would say that Entropic would come back. At that point if  
 14 they were to win and the vendor support agreement is  
 15 terminated, then the covenant not to sue is not in place and  
 16 then Entropic has a basis to file a lawsuit against Comcast.  
 17 But that's not today. That's what I'm trying to say. I hope  
 18 that's clear.

19 THE COURT: And if that happens, what is affected  
 20 is the period of infringement, the period that damages would  
 21 accrue, again assuming Entropic prevails on its patent  
 22 infringement?

23 MR. PADMANABHAN: I want to be careful here, Your  
 24 Honor. I want to answer your question, but I also want to  
 25 make I'm not -- that it's not taken out of context later. So

#### UNITED STATES DISTRICT COURT

1 we would say that Entropic does not -- does not have subject  
 2 matter jurisdiction until that vendor support agreement is  
 3 terminated. So that's step one.

4 But, yes, that would also impact the damages  
 5 period. But they don't get to even file a case against us  
 6 until that termination is effected.

7 THE COURT: I understand your position. That's  
 8 helpful.

9 Okay. I kind of took us aside. What else? I  
 10 really need to wrap this up.

11 MR. PADMANABHAN: Absolutely, Your Honor. I  
 12 actually think that -- you know, before we close out, let's  
 13 just talk about the issue of -- if we can go to the Dobrova  
 14 case. So this idea -- and I want to just make sure our  
 15 record is clear on this because the briefing is very clear.

16 Mr. Bridges got up and he said that -- and this  
 17 actually, Your Honor, is not in the deck. We added it in  
 18 response to your tentative this morning, but the cases are  
 19 cited in our briefing.

20 So Mr. Bridges got up and he said, without citing  
 21 any case law, he said, well, you know, we think you could --  
 22 the timing of when a willfulness allegation doesn't matter.  
 23 But that's not what the present perfect tense means. We  
 24 found New York case law dead on point. They have no  
 25 response. They haven't responded with any case law

#### UNITED STATES DISTRICT COURT

1 interpreting contract language under New York law.  
 2 So the case law says that this phrase means it's  
 3 got to be an allegation of willful infringement before the  
 4 VSA was entered. That makes sense, because the whole point  
 5 of the vendor support agreement is a vendor and its customer  
 6 coming together and saying we're going to work together and  
 7 we'd like to keep the peace.

8 So it's consistent with both the law and it's  
 9 consistent with the pragmatic consideration that Mr. Bridges  
 10 raised, although not discussing the specificity of the two  
 11 parties.

12 So with that, Your Honor, I'll take my seat.

13 THE COURT: Okay. Thank you very much. You've  
 14 given me a lot to think about.

15 Do you want to -- does Comcast want to file a  
 16 supplemental brief in response to all these new cases that  
 17 Entropic has now called to my attention? I mean, I need to  
 18 get this right. If there's -- if there are -- if there is  
 19 case law that points us, points me in the right direction, I  
 20 need to consider them.

21 MR. PADMANABHAN: Yeah, exactly.

22 THE COURT: Do you want to file a brief in  
 23 response?

24 MR. PADMANABHAN: You know, Your Honor, let me make  
 25 a comment which I probably should have done at the lectern.

UNITED STATES DISTRICT COURT

1 I'll return to the lectern for a moment, because one thing  
 2 that Mr. Bridges said, he said, well, they talk about DJ  
 3 cases, and then we realized the DJ cases are wrong as well.

4 No. What we said about the declaratory judgment  
 5 cases was that their characterization of those cases was  
 6 wrong. They read the declaratory judgment cases as saying  
 7 that unless a covenant has no exceptions, it does not take  
 8 away subject matter jurisdiction. That is not what those  
 9 cases say.

10 What those cases say in each of those instances, as  
 11 Mr. Bridges noted, a patentholder who's a declaratory  
 12 judgment defendant gave a covenant not to sue in order to try  
 13 and get out of the litigation. Then that covenant not to sue  
 14 had a gaping hole in it. Okay. It did not apply.

15 In this case there's no reasonable argument that  
 16 this covenant not to sue does not apply to each of the 20  
 17 patents in this case. The only way that they would not apply  
 18 is if Entropic could plausibly allege willfulness with  
 19 respect to one of those patents, which they cannot.

20 THE COURT: You're not answering my question.

21 MR. PADMANABHAN: Yeah.

22 THE COURT: Do you want to file a supplemental  
 23 brief?

24 MR. PADMANABHAN: I apologize, Your Honor. We  
 25 don't know what they actually have said about those cases.

UNITED STATES DISTRICT COURT

1 We heard Mr. Bridges, but they haven't actually sought leave  
 2 or explained why those cases --

3 THE COURT: Is that a no?

4 MR. PADMANABHAN: I just don't know what I would be  
 5 filing a supplemental brief on, Your Honor.

6 THE COURT: Let me ask Entropic.

7 Do you want to file a supplemental brief now that  
 8 you've found these cases?

9 MR. BRIDGES: I mean, if it's helpful to  
 10 Your Honor, particularly with subject matter jurisdiction,  
 11 the Court has to get it right. I would prefer Your Honor to  
 12 be in possession of more information than less, so we're  
 13 happy to do that.

14 If Comcast is absolutely against it, it seems to me  
 15 that perhaps the most rational thing to do, Your Honor, would  
 16 be to say to the parties: You can have a couple of pages. I  
 17 mean, this should be fairly short and to the point, and then  
 18 maybe they respond to what we said.

19 THE COURT: Yes. So this is an important issue.

20 It's a constitutional issue of standing. It's kind of how I  
 21 view it. Well, it's how Comcast has teed it up. So I need  
 22 to get it right, so why don't -- why doesn't Entropic file a  
 23 five-page -- is five pages sufficient?

24 MR. BRIDGES: I think that's absolutely adequate,  
 25 Your Honor.

UNITED STATES DISTRICT COURT

1 THE COURT: Five-page supplemental brief by -- how  
 2 quickly can you get it? A week from Friday?

3 MR. BRIDGES: That's no problem at all, Your Honor.

4 THE COURT: So deadline of August 18th for  
 5 Entropic's supplemental brief hopefully explaining these  
 6 eight cases and why you think they're relevant.

7 And then is two weeks sufficient, Mr. Padmanabhan?

8 MR. PADMANABHAN: Absolutely, Your Honor.

9 THE COURT: So that's September 1st, deadline for  
 10 response of supplemental brief. I'll call it that. And then  
 11 that's it.

12 MR. PADMANABHAN: That would be great, Your Honor.

13 THE COURT: So I'll refrain from deciding this  
 14 motion until I get those supplemental briefs. Okay.

15 MR. PADMANABHAN: Thank you, Your Honor.

16 THE COURT: Thank you. Now I'm not going to take  
 17 any more argument this.

18 Let's move to the scheduling conferences. I need  
 19 to set a claim construction schedule. I'm thinking of it as  
 20 the MoCA cases on the one hand and the cable cases on the  
 21 other hand. I think you have provided me with Rule 26(f)  
 22 reports along those lines.

23 Let me talk about the MoCA cases first. I'm  
 24 looking at ECF 106 filed in the 1048 case. I'm not sure why  
 25 I'm looking at this particular one.

UNITED STATES DISTRICT COURT

1 MS. GOODRICH: I believe it's September 8th,  
2 Your Honor.

3 THE COURT: All right. Well, hopefully DirecTV  
4 will retain counsel soon so DirecTV can meaningfully  
5 participate in the discussion about case schedules.

6 How soon can you file a stipulation in the cable  
7 cases for a claim construction schedule?

8 Everybody is here; that is, everybody is before the  
9 Court.

10 MS. GOODRICH: I would say within a week, if not  
11 less.

12 MR. PADMANABHAN: That should be fine. I mean,  
13 we're just deciding a schedule, so it should be fine.

14 THE COURT: Deadline of August 18th for the parties  
15 in the cable cases to file a stipulation for a claim  
16 construction schedule. Like I said, the events that you've  
17 identified are fine. The relative time between events in  
18 general is fine. Just pick a final date that's between that  
19 February 27th and October 22nd date.

20 MS. ISAACSON: Yes, Your Honor. Thank you.

21 THE COURT: Okay. And then I will see -- everybody  
22 involved in the MoCA cases, are you all coming to the  
23 September 8th scheduling conference, or is that just Entropic  
24 and DirecTV? I have forgotten where we are.

25 MS. GOODRICH: It's just Entropic and DirecTV,  
UNITED STATES DISTRICT COURT

1 Your Honor.

2 THE COURT: Okay. Well, my hope is when we have  
3 that scheduling conference, those two sets of parties can  
4 represent on behalf of everybody in the MoCA cases that  
5 you've reached a consensus on a case schedule that will trail  
6 the cable cases case schedule.

7 MS. GOODRICH: Understood, Your Honor.

8 THE COURT: All right. I really need to get going.  
9 What else do we need to accomplish here today?

10 MR. PADMANABHAN: We had one point of  
11 clarification, Your Honor. So based on your tentative and  
12 the posture of the Comcast case, we understood that there is  
13 no discovery in that case pending resolution of the 12(b)(1)  
14 issue.

15 THE COURT: There's no jurisdictional discovery.

16 MR. PADMANABHAN: Okay. Understood, Your Honor.

17 THE COURT: Well, that's what the tentative said.

18 MS. GOODRICH: If I may, Your Honor, discovery has  
19 been open for weeks now. We did serve discovery on Comcast  
20 that is directed to some of the issues raised in the motion  
21 to dismiss.

22 Those responses are also due on August 28th. We're  
23 hoping that we get responses and documents which might inform  
24 the supplemental briefing. If not, amendment if that's  
25 necessary.

UNITED STATES DISTRICT COURT

1 MR. PADMANABHAN: Your Honor, as you can guess, our  
2 position is that they're fishing for some basis to allege  
3 willfulness, which they should have put in the original  
4 complaint.

5 THE COURT: Okay. Well, I'm not going to rule on  
6 that. The status quo is what it is in terms of discovery.  
7 I'm not ruling -- I don't think I need to say any more than  
8 that. If you refuse to respond and there's a discovery  
9 dispute, I'm sure that that will bubble up through the  
10 Special Master.

11 Is the Special Master here? Yes. Mr. Kaiser, good  
12 to see you. So you got say two words. That's good. On the  
13 record. It's good to see you here, though. I appreciate it.

14 So that's an issue for you to deal with if that  
15 happens. Mr. Kaiser, do you want any more guidance on that  
16 right now?

17 MR. KAISER: No, Your Honor.

18 THE COURT: Okay. That's three more words.

19 And again I'm teasing Mr. Kaiser. I'm very happy  
20 that he's involved in this case, and I appreciate his  
21 service.

22 Okay. What else do we have to deal with today?

23 MS. GOODRICH: Your Honor, just to circle back to  
24 something we deal with at the end. You asked if the MoCA  
25 standard was in the record. It is attached to the claim

UNITED STATES DISTRICT COURT

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1 charts to the MoCA complaints at Exhibit 4, P and R.

2 THE COURT: Exhibit 4 P --

3 MS. GOODRICH: Excuse me. Exhibits B, P as in  
4 Paul, and R to the complaints.

5 THE COURT: Exhibits Bravo, Papa, and Romeo?

6 MS. GOODRICH: Yes.

7 THE COURT: To the complaints in the MoCA cases?

8 MS. GOODRICH: Correct, with claim charts with  
9 definitions of the network coordinator citing the MoCA  
10 standard.

11 THE COURT: Got it. Okay. Good. Thank you. That  
12 answers that question.

13 What else do we need to accomplish today?

14 MS. GOODRICH: Nothing from plaintiff, Your Honor.

15 MS. ISAACSON: Nothing from Cox, Your Honor.

16 MR. PADMANABHAN: Nothing from Comcast, Your Honor.

17 MR. SHARTZER: Nothing from DISH, Your Honor.

18 THE COURT: Okay.

19 Counsel, thank you all very much. I enjoy this  
20 case. I will take, of course, all the motions that are

21 pending under submission. I've made -- my minute order  
22 memorializing this hearing will reflect the briefing schedule  
23 that we talked about and reflect my request that you file  
24 those stipulations for the claim construction schedules.

25 I appreciate all of the briefing. Oh, I think --

UNITED STATES DISTRICT COURT

1 comes.

2 MR. SHARTZER: Right. Thank you.

3 THE COURT: Okay. Anything else?

4 All right. Counsel, thank you very much. Special  
5 Master, thank you very much. I'll see some of you on  
6 September 8th, and I look forward to receiving all the  
7 documents that we talked about you filing with me.

8 Thank you.

9 (Proceedings concluded at 1:02 p.m.)

10 CERTIFICATE

11 I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT  
12 TRANSCRIPT OF THE STENOGRAPHICALLY RECORDED PROCEEDINGS IN  
13 THE ABOVE MATTER.  
14 FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE  
15 REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE  
16 REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

17  
18 /s/ Miriam V. Baird 08/17/2023

19 MIRIAM V. BAIRD DATE

20 OFFICIAL REPORTER

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UNITED STATES DISTRICT COURT